

Application No. 08/899,410

Docket No.: PA-1239

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Galloway, et al.

SERIAL NO.: 08/481,685

Group Art Unit: 1315

FILED: June 7, 1995

FOR: MULTILAYER THERMOPLASTIC
FILMS AND PACKAGES MADE
THEREFROM

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Date: 5/22/96

(Registration No. 36,036)

DECLARATION OF PRIOR INVENTION TO
OVERCOME CITED PATENTS UNDER 37 C.F.R. 1.131

1. This declaration is to establish completion of the invention in this application, as claimed in claims 1-21, in the United States at a date prior to April 6, 1993, which is the effective date under 35 USC §102(e) of prior art U.S. Patent No. 5,374,459, to Mumpower, and also prior to July 12, 1993, which is the effective date under 35 U.S.C. §102(e) of the prior art U.S. Patent No. 5,347,613, to Georgelos.

2. The persons making this declaration are joint inventors of the subject matter of this application.

3. Attached hereto as Exhibit A is an internal Experiment and Development Order of American National Can Company, which establishes that the invention as claimed in claims 1-21 was conceived at a date prior to April 6, 1993, which is earlier than the effective date of the references.

4. As evidenced by Exhibit A, the films conceived

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wee three-layer, irradiated films, with an outer layer of a blend of EVA and LLDPE, a core barrier layer, and a inner layer of a blend of EVA and an ethylene alpha-olefin copolymer "EAO" formed from a polymerization reaction in the presence of a single site catalyst, wherein the ethylene alpha-olefin copolymer had a molecular weight distribution of less than 2.5 and a melt flow rate ratio of greater than 7. The following are to specific film structures as detailed in Exhibit A:

- V2: EVA-LLDPE/barrier/100% EAO
- V3: EVA-LLDPE/barrier/90% EAO - 10% EVA
- V4: EVA-LLDPE/barrier/80% EAO - 20% EVA
- V5: EVA-LLDPE/barrier/50% EAO - 50% EVA
- V6: EVA-LLDPE/barrier/10% EAO - 90% EVA

5. Attached hereto at Exhibit B is an internal Laboratory Request of American National Can Company. The Laboratory Request establishes that the invention as claimed in claims 1-21 was reduced to practice at a date prior to April 6, 1993, which is earlier than the effective date of the references.

6. As set forth on the cover page of the laboratory request, heat shrinkable, three layer films were made, having the following structures, wherein "EAO" again refers to an ethylene alpha-olefin copolymer formed from a polymerization reaction in the presence of a single site catalyst, wherein the ethylene alpha-olefin copolymer has a molecular weight distribution of less than 2.5 and a melt flow rate ratio of greater than 7:

V2: 100% EAO/barrier/100% EAO

V3: 90% EAO-10% EVA/barrier/90% EVA-10% EAO

V4: 80% EAO-20% EVA/barrier/80% EAO-20% EVA

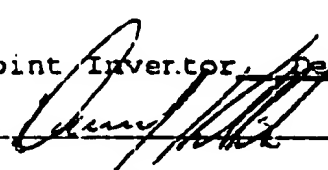
V5: 10% EAO-90% EVA/barrier/10% EAO-90% EVA

V6: 20% EAO-80% EVA/barrier/20% EAO -80% EVA

The films were made and tested for various physical properties. The results of the tests are set forth in the Laboratory Request.

7. This declaration is submitted prior to final rejection.

8. As a person signing below, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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